



KROKIDAS & BLUESTEIN LLP

CLIENT ALERT

COVID-19: Layoffs, Furloughs, and Unemployment

Employers around the Commonwealth have been forced to make difficult choices about their workers in the age of COVID-19. These choices, which include layoffs, furloughs, and hours reductions, may ultimately impact whether employees are entitled to collect unemployment benefits.

Layoffs. Even in cases where a layoff is characterized as temporary, it still constitutes a termination of the employment relationship.

- Employers are required by the Massachusetts Wage Act to pay employees all earned wages on the day of termination, including all accrued but unused vacation time.
- The Fair Labor Division of the Massachusetts Attorney General’s Office (“AGO”) has determined that in the event of a temporary layoff, the AGO will not take enforcement action against an employer for failing to pay out accrued vacation time when the employee voluntarily agrees to save it until a later time. However, employers could still face employees’ claims through private litigation.

Furloughs. A furlough is a period of time in which employees do not work, but remain employed by their employer.

- Because a furlough does not terminate the employment relationship, the Massachusetts Wage Act does not require the employer to pay out all wages, including accrued but unused vacation time, upon an employee’s furlough. Employers should note that the AGO has not taken a formal position as to the distinction between a layoff and a furlough.
- Employers may consider permitting employees to use their accrued sick and vacation time during a furlough. However, an employee’s use of such accrued time may affect the employee’s ability to obtain unemployment benefits.
- Employers should carefully review the terms of their benefit offerings to determine whether employees would be entitled to continue participating in benefit plans if they are not working.
- Pursuant to Massachusetts Department of Unemployment Assistance (“DUA”) emergency regulations, employees who are temporarily unemployed due to lack of work

because of COVID-19 and who expect to return to work are eligible for unemployment benefits. These workers are on “standby status,” and need to be available for hours offered by their employers and take reasonable measures to remain in touch with their employers.

Hours Reductions. Employers may consider reducing the number of hours worked by their employees.

- For reduction in hours of exempt employees who must be paid on a “salary basis” in order to maintain their exempt status, this is more difficult, but not impossible. If an employer wishes to reduce exempt employees’ hours and commensurately reduce their pay, the employer must do so *prospectively*. The employer should establish a schedule as far in advance as possible, setting forth how many hours each exempt employee will work each pay period and the extent of the salary reduction during those future pay periods.
- Employers should carefully review the terms of their benefit offerings to determine whether employees must work a minimum number of hours in order to remain eligible to participate in benefit plans.

CARES Act Changes to Unemployment. On Friday, March 27, 2020, the President signed into law the Coronavirus Aid, Relief and Economic Security Act (the “Act”). Among the many provisions aimed at providing relief to struggling businesses and workers are significant changes to unemployment benefits, including an expansion of unemployment insurance benefits.

- The Act provides for an additional \$600 per week in “Federal Pandemic Unemployment Compensation” benefits through July 31, 2020. This amount is available in addition to those benefits a State would ordinarily pay.
- Individuals who would otherwise not qualify for unemployment benefits because they are self-employed, independent contractors, or lack sufficient work history can claim benefits under the Act.
- The benefit period has been increased to a maximum of 39 weeks, an increase of 13 weeks.
- The Massachusetts DUA has announced that it is awaiting federal guidance regarding implementation and availability of these benefits, and therefore the benefits are not yet available.

Work Share Programs. The Act also provides funding to States for work share programs, whereby employees can receive partial unemployment benefits if work hours are reduced across the workplace. Massachusetts already has a work share program and it requires employers to submit a plan to the State for approval. This [site](#) provides additional information.